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In the Supreme Court of the United States

OCTOBER TERM, 1940

No. 442

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

EXPRESS PUBLISHING COMPANY

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

OPINIONS BELOW

The opinion of the Circuit Court of Appeals for the Fifth Circuit (R. I., 85–87)[1] is reported in 111 F. (2d) 588. The findings of fact, conclusions of law, and order of the National Labor Re-

[1] The record is composed of four volumes. Volume I consists of the formal pleadings and proceedings before the Board and in the court below; Volume II comprises the testimony taken at the hearing; and Volume III comprises a stipulation and attached exhibits introduced at the hearing. Volume IV is a copy of a contract between respondent and a labor organization not connected with this case, and is not referred to in this brief.

lations Board (R. I., 52–73) are reported in 13 N. L. R. B. 1213.

JURISDICTION

The decree of the Circuit Court of Appeals (R. I., 87–88) was entered on May 7, 1940. A petition for rehearing filed by the Board (R. I., 88–95) was denied on June 17, 1940 (R. I., 96). The petition for a writ of certiorari was filed September 17, 1940, and granted November 12, 1940. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925, and upon Section 10 (e) of the National Labor Relations Act.

QUESTIONS PRESENTED

1. Whether, upon findings that an employer has refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may order the employer to cease and desist from such refusal to bargain, in addition to affirmatively requiring the employer to bargain collectively.

2. Whether a refusal to bargain collectively in violation of Section 8 (5) of the Act likewise constitutes a violation of Section 8 (1) of the Act, forbidding employers to interfere with, restrain, or coerce employees in their free exercise of the rights of self-organization and of collective bargaining through representatives of their own choosing.

3. Whether, upon findings that an employer has

refused to bargain collectively with the authorized representative of its employees in an appropriate unit, the Board may validly order the employer to post in its plant appropriate notices to its employees stating its intention to comply with the cease and desist and affirmative provisions of the Board's order.

STATUTE INVOLVED

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449, 29 U. S. C., Supp. V., Sec. 151 *et seq.*) are set forth in Appendix A.

STATEMENT

Upon the usual proceedings,[2] the Board issued its findings of fact, conclusions of law, and order (R. I, 52–73). The facts, as found by the Board and as shown by the evidence, may be summarized as follows.[3]

Respondent publishes two newspapers at San Antonio, Texas (R. I., 54–55; R. III, 1–4). It

[2] Pursuant to Section 10 of the National Labor Relations Act, these were: amended charge (R. I, 8–10), complaint (R. I, 10–15), answer (R. I, 16–22), hearing before a trial examiner (R. II, 1–69), filing of a brief by respondent with the trial examiner (R. 1, 26), intermediate report of the trial examiner (R. I, 25–40), exceptions thereto by respondent (R. I, 41–49), and oral argument before the Board (R. I, 51).

[3] In the following statement, the references preceding the semicolons are to the Board's findings and the succeeding references are to the supporting evidence or stipulation of the parties.

is stipulated that the employees in the editorial departments of both newspapers constitute an appropriate unit for purposes of collective bargaining, and that at all relevant times a majority of those employees had designated the San Antonio Newspaper Guild to act as their bargaining representative (R. I, 56–57, 70–71; R. III, 5). On four occasions during the months of March, April, and May, 1938, respondent met with representatives of the Guild for the ostensible purpose of bargaining collectively (R. I., 57–66; R. III, 14–22, 23–49, 62–103, 107–124). However, respondent rejected each of the Guild's proposals on the bare ground that it was "unreasonable," or "unacceptable," or "unwarranted," or "impracticable" (R. I, 59–61, 64–65, 67; R. III, 25–26, 34, 114–115, 117–118, 122). Respondent would not specify in what respects the proposals were unacceptable or what changes would make them acceptable, and refused to submit any counterproposals, although requested by the Guild to do so (R. I, 61, 65–66, 67; R. III, 34–37, 84–85, 115). The Board found that respondent's technique "was calculated to and did make any productive negotiations impossible" and that respondent at no time had any intention of negotiating in good faith with the Guild or of entering into a collective agreement with it (R. I, 66–67). Accordingly, the Board concluded that respondent had refused to bargain collectively in violation of Section 8 (5) and that this refusal

to bargain also interfered with the employees' exercise of the rights guaranteed in Section 7, in violation of Section 8 (1) (R. I, 69, 71).

The Board further found that on April 4, 1938, during the negotiations mentioned above, Hall, respondent's secretary, assembled the editorial employees and read to them a prepared statement, which, the Board concluded, amounted to an interference with the Guild's efforts to negotiate, and constituted a further violation of Section 8 (1) (R. I, 67–68, 71).

Upon these findings, the Board issued an order (R. I, 71–73) which for ready reference is printed in full in Appendix B (*infra,* pp. 24–25). The order requires respondent to cease and desist (a) from refusing to bargain collectively with the Guild; and (b) from in any manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed in Section 7 of the Act. As affirmative action which it found would effectuate the policies of the Act, the Board ordered respondent (a) upon request, to bargain collectively with the Guild as the exclusive representative of its editorial employees, and, if an understanding were reached, to embody it in a signed agreement if so requested by the Guild; (b) to post and maintain for sixty days in conspicuous places within the plant notices to the employees stating that respondent would cease and desist as

required by the order and would bargain collectively with the Guild; and (c) to notify the Board's Regional Director concerning the steps respondent had taken to comply with the order.

On January 22, 1940, the Board filed in the court below a petition for enforcement of its order against respondent (R. I, 1–5). On May 7, 1940, the court handed down its opinion holding that the Board had validly found a refusal to bargain collectively but that the statement read to the employees (*supra*, p. 5) did not violate Section 8 (1) (R. I, 85–87).[4] On the same day, the court entered a decree (R. I, 87–88) enforcing the provision of the Board's order requiring respondent, as affirmative action, to bargain collectively with the Guild upon request, and the provision requiring notification to the Regional Director concerning steps taken to comply with the order. But the court denied enforcement to both cease and desist provisions and substituted for the affirmative requirement that notices to the employees be posted in the plant a provision ordering respondent to notify the Guild of its willingness to bargain collectively (R. I, 87–88). On June 17, 1940, the court denied, without opinion, a petition for rehearing filed by the Board (R. I, 88–95, 96).

[4] Since the petition for certiorari did not request review of the holding with respect to this statement (Pet. 6, note 3), the question whether or not respondent violated the Act by making the statement is not before this Court.

SPECIFICATION OF ERRORS TO BE URGED

The Circuit Court of Appeals erred:

1. In failing to enforce the two cease and desist provisions of the Board's order.

2. In failing to enforce the provision of the Board's order requiring respondent to post notices to its employees stating that it would comply with the Board's order, and in substituting for that provision a requirement that respondent notify the Guild of its willingness to bargain collectively.

SUMMARY OF ARGUMENT

1. The court below sustained the Board's finding that respondent had refused to bargain collectively with the Guild in violation of Section 8 (5) of the Act. Under Section 10 (c) of the Act the Board was required to order the respondent to cease and desist from this unfair labor practice, and under Section 10 (e) the court below was required to enforce that order. Its failure so to do constituted patent error.

The court below also erred in failing to enforce the provision of the Board's order requiring the respondent to cease and desist from further violation of Section 8 (1). Respondent's refusal to bargain constituted an unfair labor practice in violation, not only of Section 8 (5), but also of Section 8 (1). Section 8 (1) forbids any interference with any of the rights guaranteed to employees by Section 7 of the Act; one of those rights is the right to

bargain collectively. Under the plain terms of the statute, therefore, a refusal to bargain collectively constitutes a violation of Section 8 (1). The legislative history of the statute establishes that the specific prohibitions of Section 8 (2), (3), (4), and (5) were not intended to limit the scope of the general prohibition contained in Section 8 (1).

The fact that the Board's order required respondent to cease and desist from "in any manner" violating Section 8 (1) does not justify the action of the court below. The decisions of this Court establish that the Board may properly impose a prohibition substantially in the language of the statute. The order must be broad enough to prevent evasion by the mere variation of tactics; an order restricted to the precise type of interference or restraint exercised in the past would make the court's decree an ineffective sanction for securing obedience to the Act.

2. The provision of the order requiring respondent to post in its plant bulletins stating that it will comply with the Board's order is in the form expressly approved by this Court in *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 462–463. The action of the court below in substituting for this provision a requirement that the respondent merely notify the Guild that it will bargain collectively constituted an improper exercise by the court of the judgment vested by Congress in the Board to determine the

particular type of relief required. Furthermore, the relief devised by the court below on its own motion plainly constituted less than that which the Board reasonably found necessary in the circumstances of this case.

ARGUMENT

I

THE CEASE-AND-DESIST PROVISIONS OF THE BOARD'S ORDER ARE VALID

1. *The requirement that respondent cease and desist from refusing to bargain collectively with the Guild.*—The court below sustained the Board's findings that respondent refused to bargain collectively with the Guild and thereby engaged in an unfair labor practice violative of Section 8 (5) of the Act;[5] upon that basis, the court enforced the remedial affirmative provision of the Board's order (*infra,* pp. 24–25), directing respondent so to bargain. The court nevertheless failed to enforce the negative provision of the order (*infra,* p. 24) requiring respondent to cease and desist from refusing to bargain.

The failure of the court below to enforce the cease-and-desist provision constituted patent error. Under Section 10 (c) of the Act it is "manda-

[5] The question of the sufficiency of the evidence is not before this Court, since the respondent has not petitioned for a review of the decision below.

tory" upon the Board to issue a cease-and-desist order directed to each unfair labor practice found.[6] *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265; cf. *National Licorice Co.* v. *National Labor Relations Board*, 309 U. S. 350, 363. Since the order requiring respondent to cease and desist from its refusal to bargain collectively was clearly "within the compass of the power given [the Board] by Congress," the court was required to enforce it upon petition by the Board under Section 10 (e) of the Act. *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 342; *National Labor Relations Board* v. *Waterman Steamship Corp.*, 309 U. S. 206, 213; *National Labor Relations Board* v. *Link-Belt Co.*, No. 235, this Term, decided January 6, 1941.

2. *The requirement that respondent cease and desist from interference, restraint, or coercion.*— Respondent's refusal to bargain collectively constituted a violation not only of Section 8 (5) but also a violation of Section 8 (1), and the Board therefore properly ordered respondent to cease

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[6] Section 10 (c) provides, in part, as follows:

"* * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice * * *."

and desist from further violating Section 8 (1), as well as from further violating Section 8 (5). Under Section 8 (1), it is an unfair labor practice for an employer to interfere with, restrain, or coerce employees in the exercise of any of the rights of self-organization and collective bargaining guaranteed in Section 7. The Board found that by refusing to bargain collectively with the Guild, respondent "interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act" (R. I., 69). Unless the Board erred in making this finding, upon which question the opinion below is silent, it is apparent that issuance of the cease and desist order restraining violations of Section 8 (1) was "mandatory" upon the Board for the reasons already stated:

The plain language of the statute, the policy which it seeks to effectuate, and its legislative history all clearly establish that a refusal to bargain collectively not only constitutes an unfair labor practice in violation of Section 8 (5), but also constitutes an unfair labor practice in violation of Section 8 (1). Section 8 (1) prohibits any interference with or restraint of employees in the exercise of the rights guaranteed to them by Section 7; one of the rights expressly guaranteed by Section 7 is the right to bargain collectively. It follows, therefore, as a matter of course that a refusal to bargain collectively is an interference

with or restraint upon the bargaining right guaranteed to employees by Section 7 and is, therefore, an unfair labor practice violative of Section 8 (1).

Moreover, a refusal to bargain interferes with the right of self-organization guaranteed by Section 7 by stultifying the preliminary action of the employees in forming or joining a labor organization and in arriving at a majority designation of a bargaining representative. The sole objective of such organizational steps is to obtain collective bargaining; consequently, a refusal to bargain when such steps have been compieted interferes with the right to self-organization, contrary to Section 8 (1), just as effectively as when efforts to organize are met at the outset by the interposition of an employer-controlled union or by discriminatory discharges. Indeed, it is precisely because an unremedied refusal to bargain leaves the employees "subject to improper restraints" and without "compiete freedom of choice", and thus has an adverse "effect on the development of collective bargaining", that a claim of shift or loss of majority status after the refusal may be disregarded. *International Association of Machinists* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940. In the present case respondent's adherence to what the court below termed (R. I. 86) a "determination in advance not to agree to anything", was sham bargaining which was calculated to, and inevitably

did, discourage and deter the employees from joining or remaining members of the Guild, or from otherwise designating that organization as their representative, and, quite possibly, from any self-organization at all for purposes of collective bargaining with respondent.

The legislative history of the Act precludes any contention that Congress, by expressly defining a refusal to bargain collectively as an unfair labor practice in Section 8 (5) of the Act, intended to exclude such a refusal from the general forms of interference, restraint, and coercion prohibited by Section 8 (1). The Committee reports establish precisely the contrary. The House Committee on Labor stated that the four subdivisions of Section 8 following 8 (1)—

> are intended to amplify and state more specifically certain types of interference and restraint that experience has proved require such amplification and specification. These specific practices, as enumerated in subsections (2), (3), (4), and (5), are not intended to limit in any way the interpretation of the general provisions of subsection (1).[7]

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[7] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 17. To the same effect, the Senate Committee on Education and Labor said (S. Rep. No. 573, 74th Cong., 1st Sess., p. 9): "The four succeeding unfair-labor practices are designed not to impose limitations or restrictions upon the general guaranties of the first, but rather to spell out with particularity some of the practices that have been most prevalent and most troublesome."

The Committee further observed that Sections 7 and 8 of the National Labor Relations Act are re-enactments of "Section 7 (a), as it now appears in the National Industrial Recovery Act, * * * amplified by the specific prohibition of certain unfair-labor practices, which by fair interpretation would constitute infringements upon the substantive rights of employees declared in section 7 (a)."[8] Since a refusal to bargain collectively with a representative selected by a majority of the employees had uniformly been held to violate Section 7 (a) of the Recovery Act (see *H. J. Heinz Co.* v. *National Labor Relations Board*, No. 73, this Term, decided January 6, 1941), it is plain that Congress contemplated that such a refusal would interfere with the rights guaranteed in Section 7 of the National Labor Relations Act and therefore would constitute a violation of Section 8 (1) of that statute.

The Circuit Courts of Appeals for the Second, Third, Fourth, and Ninth Circuits have held that a refusal to bargain collectively in violation of Section 8 (5) likewise constitutes interference, restraint, and coercion in violation of Section 8 (1) and warrants a corresponding cease and desist order. *Art Metals Const. Co.* v. *National Labor*

[8] H. Rep. No. 1147, 74th Cong., 1st Sess., p. 7. Section 7 (a) of the National Industrial Recovery Act provided, in part, that "* * * employees shall have the right to organize and bargain collectively through representatives of their own choosing * * *." (48 Stat. 195, 198).

Relations Board, 110 F. (2d) 148, 150–151 (C. C. A. 2), overruling in this respect *National Labor Relations Board* v. *Remington Rand, Inc.,* 94 F. (2d) 862, 869 (C. C. A. 2), certiorari denied, 304 U. S. 576; *National Labor Relations Board* v. *Griswold Mfg. Co.,* 106 F. (2d) 713, 715–716 (C. C. A. 3); *National Labor Relations Board* v. *Highland Park Mfg. Co.,* 110 F. (2d) 632, 639 (C. C. A. 4); *Hartsell Mills Co.* v. *National Labor Relations Board,* 111 F. (2d) 291, 292 (C. C. A. 4); *National Labor Relations Board* v. *Biles Coleman Lumber Co.,* 98 F. (2d) 18, 22–23 (C. C. A. 9). The court below also apparently adopted this view in *National Labor Relations Board* v. *Lane Cotton Mills Co.,* 111 F. (2d) 814, 816, and in *National Labor Relations Board* v. *Whittier Mills Co.,* 111 F. (2d) 474, 479.[9]

If the Board could properly issue a cease and desist order directed to unfair labor practices committed by respondent in violation of Section 8 (1) of the Act, it is plain that the order requiring respondent to cease and desist from "in any man-

[9] In the *Lane Cotton Mills* case the court said (111 F. (2d), at p. 816): "The respondent's flat refusal to bargain with the T. W. O. C. or its committee supports the finding that Lane had interfered with its employees in the exercise of the rights guaranteed by Section 7 by refusing to bargain collectively within the meaning of Section 8 (5)." In the *Whittier Mills* case the court held that a refusal to bargain collectively in violation of Section 8 (5) "interfered with and coerced" the employees in violation of Section 8 (1) (111 F. (2d), at p. 479).

ner" interfering with, restraining, or coercing its employees in the exercise of their rights guaranteed by Section 7 of the Act, is appropriate in form. The Board may validly impose a "prohibition substantially in the language of the statute". *National Labor Relations Board* v. *Swift & Co.*, decided November 20, 1940 (C. C. A. 8). In *National Labor Relations Board* v. *Fansteel Metallurgical Corp.*, 306 U. S. 240, 262, this Court stated that the Board's order "properly requires respondent to desist from interfering in any manner with its employees in the exercise of their right to self-organization". Similarly in *Texas & New Orleans R. Co.* v. *Brotherhood of Railway Clerks*, 281 U. S. 548, the Court upheld, over the objection that it was too general in terms (281 U. S., at p. 552), an injunction framed substantially in the terms of Section 2, subdivision Third of the Railway Labor Act,[10] so as to restrain the employer "from in any way or manner interfering with, influencing, intimidating, or coercing" its employees in the free exercise of their rights of self-organization and to select collective bargaining representatives (281 U. S. at 555–556n). The

[10] Act of May 20, 1926, c. 347, 44 Stat. 577, 45 U. S. C. §§ 151–163. Section 2, subdivision Third reads, in part, as follows: "Third. Representatives, for the purposes of this Act, shall be designated by the respective parties * * * without interference, influence, or coercion exercised by either party over the self-organization or designation of representatives by the other."

Court held that Section 2, subdivision Third imposed a "definite statutory prohibition of conduct" and that the decree did not go beyond "proper enforcement of the provision" (281 U. S. at 567, 568, 571). This decision was subsequently relied upon in *Virginian Railway Co.* v. *System Federation No. 40,* 300 U. S. 515, 543–544, to uphold a decree enjoining a carrier from "any interference * * * with the free choice of representatives by its employees".[11]

The necessity of an order cast in the terms of Sections 8 (1) and 7 of the National Labor Relations Act is apparent. If Section 10 (c) of the Act is interpreted as authorizing the Board to require the abatement only of the particular type of restraint in which the employer has engaged, he is free to set at naught the order and the decree enforcing it by varying the tactics, if not the purpose, of his interference. An order "formed and phrased to prevent" evasion is warranted. *National Labor Relation Board* v. *Pure Oil Co.,* 103 F. (2d) 497, 498 (C. C. A. 5).

The failure of the court below to enforce the cease and desist provisions of the Board's order was not in accord with the intent of Congress, plainly expressed in Section 10 of the Act, that

[11] See also *National Labor Relations Board* v. *National Motor Bearing Co.,* 105 F. (2d) 652, 660–661 (C. C. A. 9); *National Labor Relations Board* v. *American Oil Co.,* 114 F. (2d) 1009 (C. C. A. 4). But *cf. National Labor Relations Board* v. *Swift & Co.,* 108 F. (2d) 988, 990 (C. C. A. 7).

those who have engaged in unfair labor practices should be placed under the sanction of a judicial decree effective to prevent interference with exercise of the rights guaranteed to employees. The cease and desist provisions are entirely valid and should have been enforced.

II

THE PROVISION OF THE BOARD'S ORDER REQUIRING RESPONDENT TO POST NOTICES IN ITS PLANT IS VALID

The court below failed to enforce the provision (R. I., 72) of the Board's order requiring respondent to post in its plant notices to its employees stating that it would comply with the cease and desist and affirmative provisions of the order. Without explanation, the court substituted for this provision a requirement (R. I., 88) that respondent notify the Guild of its willingness to comply with the order to bargain collectively.

It is settled that the Board is authorized to require the posting of appropriate notices directed to the employees. *National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 267; *National Labor Relations Board* v. *Bradford Dyeing Ass'n*, 310 U. S. 318, 343–344.[12] Plainly,

[12] The House Committee on Labor, in recommending enactment of the bill which became the National Labor Relations Act, mentioned the "posting of appropriate bulletins" as one type of affirmative action which the Board might require pursuant to Section 10 (c). H. Rep. No. 1147, 74th Cong., 1st Sess., p. 24.

there was no valid ground upon which the court below could have refused to require the posting of notices of any kind. Further, the particular form of notice ordered by the Board in the present case was expressly approved in *National Labor Relations Board* v. *Falk Corporation*, 308 U. S. 453, 462–463, and orders of the Board requiring the posting of substantially identical notices have been enforced by this Court and the Circuit Courts of Appeals, including the court below, in dozens of cases.[13]

Even were the court below of the opinion that the requirement which its decree substituted for the no-

[13] Despite the decision in the *Falk* case, the Circuit Court of Appeals for the Second Circuit has expressed the view that an order of the Board requiring the posting of notices should not require the employer to state that he "will cease and desist" from the unfair labor practices found, because this implied a confession of guilt, but that he should be required to state instead that he would not commit such unfair labor practices. *Art Metals Const. Co.* v. *National Labor Relations Board*, 110 F. (2d) 148, 151–152; see also *Hartsell Mills Co.* v. *National Labor Relations Board*, 111 F. (2d) 291, 293 (C. C. A. 4th). But see *National Labor Relations Board* v. *Brown Paper Mill Co., Inc.*, 108 F. (2d) 867, 871 (C. C. A. 5th), certiorari denied, 310 U. S. 651; *H. J. Heinz Co.* v. *National Labor Relations Board*, 110 F. (2d) 843, 850 (C. C. A. 6), affirmed, January 6, 1941, No. 73, this Term; *National Labor Relations Board* v. *Elkland Leather Co.*, 114 F. (2d) 221 (C. C. A. 3), certiorari denied, November 18, 1940, No. 496, this Term; *National Labor Relations Board* v. *Arcade Sunshine Co.*, decided December 9, 1940 (App. D. C.). This question is no longer of importance because the Board has changed its practice and now provides in all cases that the employer's notices state that he "will not engage in the conduct from which he is ordered to cease and desist" rather than that he "will cease and de-

tice provision of the Board's order was sufficient to dissipate the effects of respondent's unfair labor practices, the court was without authority to exercise the Board's "judgment and discretion * * * in choosing the particular affirmative relief to be ordered" (*National Labor Relations Board* v. *Pennsylvania Greyhound Lines, Inc.*, 303 U. S. 261, 265); the Board had exercised its "expert judgment as to ways and means of protecting the freedom of choice guaranteed to the employees by the Act" (*International Association of Machinists* v. *National Labor Relations Board*, No. 16, this Term, decided November 12, 1940), and it was for the court to enforce the relief so ordered if it was within the Board's authority.

The relief devised by the court on its own motion plainly constituted less than that which the Board reasonably found necessary in the circumstances of this case: all notification to the employees was omitted and the required affirmation to the Guild omitted any statement or implication that respondent would no longer commit the unfair labor practices in which it was found to have engaged. In short, the provision devised by the court "neither renounced the company's

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sist." To avoid controversy on a point which is no longer of importance in view of the Board's present practice, the Board will not object, if respondent so requests, to a modification of the notice provision of the order so as to conform with the Board's present practice. Cf. *Phelps Dodge Corp.* v. *National Labor Relations Board*, 113 F. (2d) 202, 204 (C. C. A. 2d).

unlawful practices nor promised their abandonment" and "fell far short of conveying 'to the employees the knowledge of a guarantee of an unhampered right in the future to determine their labor affiliations.'" *National Labor Relations Board* v. *Falk Corporation, supra,* at 462–463. The policies of the Act were not served by substitution of the limited notification to the Guild for the appropriate notices to the employees ordered by the Board.

CONCLUSION

It is respectfully submitted that the judgment of the court below, insofar as it fails to enforce and modifies the order of the Board, should be reversed, and the cause remanded with directions to enforce the order in full.

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JANUARY 1941.

APPENDIX A

The pertinent provisions of the National Labor Relations Act (Act of July 5, 1935, c. 372, 49 Stat. 449; 29 U. S. C., Supp. V, Sec. 151 *et seq.*) are as follows:

> SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.
>
> SEC. 8. It shall be an unfair labor practice for an employer—
>
> (1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.
>
> * * * * * *
>
> (5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of Section 9 (a).
>
> SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at

any time to present grievances to their employer.

* * * * *

SEC. 10. (c) * * * If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. * * *

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(e) * * * Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. * * * The findings of the Board as to the facts, if supported by evidence, shall be conclusive. * * *

APPENDIX B

The Board's order is as follows:

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that Express Publishing Company, San Antonio, Texas, and its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Refusing to bargain collectively with San Antonio Newspaper Guild as the exclusive representative of the city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News;

(b) In any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purposes of collective bargaining or other mutual aid and protection, as guaranteed in Section 7 of the Act.

2. Take the following affirmative action, which the Board finds will effectuate the policies of the Act:

(a) Upon request bargain collectively with the San Antonio Newspaper Guild as

the exclusive representative of the city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers in the editorial departments of both the San Antonio Express and San Antonio News, with respect to rates of pay, hours of employment, and other conditions of employment, and if an understanding is reached on any such matters, embody said understanding in a signed agreement, if requested to do so by the Guild;

(b) Post immediately notices to its employees in conspicuous places within the plant, and maintain such notices for a period of at least sixty (60) consecutive days from the date of posting; stating (1) that respondent will cease and desist as aforesaid, and (2) that the respondent will bargain collectively with San Antonio Newspaper Guild as the representative of its city editors, reporters, copy-desk men and rewrite men, artists, photographers, copy boys and librarians, society editors and writers, and sports editors and writers, in the editorial departments of the San Antonio News and San Antonio Express, with respect to rates of pay, hours of employment, and other conditions of employment and that if an understanding is reached on any such matters the respondent will embody said understanding in a signed agreement, if requested to do so by the Guild;

(c) Notify the Regional Director for the Sixteenth Region in writing within ten (10) days from the date of this Order what steps the respondent has taken to comply herewith.

U. S. GOVERNMENT PRINTING OFFICE: 1941